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7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-970

13 **FRANCESCHINI JOSEPHINE GOWER**  
14 **aka JOSEPHINE MARIE**  
15 **FRANCESCHINI GOWER**  
1725 East Valley Road  
Santa Barbara, CA 93108

**A C C U S A T I O N**

16 Registered Nurse License No. 256534,

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs (Board).

22 2. On or about July 31, 1975, the Board issued Registered Nurse License No. 256534 to  
23 Franceschini Josephine Gower, aka Josephine Marie Franceschini Gower (Respondent). The  
24 Registered Nurse License was in full force and effect at all times relevant to the charges brought  
25 herein, and will expire on September 30, 2014, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

**STATUTORY PROVISIONS**

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board/ of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 2750 provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an expired license at any time within eight (8) years after the expiration.

8. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . ."

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9. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

• • • •

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof. . . ."

## REGULATORY PROVISION

10. California Code of Regulations, title 16, section 1444 states, in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

“(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160...”

## COST RECOVERY

11. Section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, and that the Board may include recovery of said costs in any stipulated settlement with the licensee.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 12. Respondent is subject to disciplinary action under sections 490 and 2761,  
4 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that  
5 on or about March 14, 2012, Respondent was convicted of a crime substantially related to the  
6 qualifications, functions or duties of a registered nurse which to a substantial degree evidences  
7 her present or potential unfitness to practice in a manner consistent with the public health, safety,  
8 or welfare. The conviction is as follows:

9 a. On or about March 14, 2012, Respondent was convicted of one misdemeanor count  
10 of violating Vehicle Code section 23152(b) [driving with an equal to or greater than 0.08% blood  
11 alcohol content (BAC)] in the criminal proceeding entitled *The People of the State of California*  
12 *v. Josephine Franceschi Gower* (Santa Barbara County Superior Court Case No. 1401204). The  
13 Court sentenced Respondent to 25 days jail via electronic monitoring, placed her on three (3)  
14 years probation, ordered her to complete a Nine-Month First Offender Alcohol Program, and  
15 ordered her to attend 45 Alcoholics Anonymous (AA) meetings.

16 b. The circumstances underlying the conviction are that on or about November 30, 2011,  
17 Respondent denied drinking and driving after her vehicle rear-ended another vehicle. A  
18 subsequent analysis of Respondent's blood revealed a BAC of 0.23%.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Alcohol Related Conviction)**

21 13. Respondent is subject to disciplinary action under sections 2761, subdivision (a),  
22 and 2762, subdivision (c), on the grounds of unprofessional conduct, in that on or about  
23 March 14, 2012, Respondent was convicted of a crime involving alcoholic beverages.  
24 Complainant refers to and by this reference incorporates the allegations set forth above in  
25 paragraph 12, subparagraphs a. and b., inclusive, as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Alcohol)**

3 14. Respondent is subject to disciplinary action under sections 2761, subdivision (a),  
4 and 2762, subdivision (b), on the grounds of unprofessional conduct, in that on or about  
5 November 30, 2011, Respondent dangerously used alcoholic beverages. Complainant refers to  
6 and by this reference incorporates the allegations set forth above in paragraphs 12 and 13,  
7 inclusive, as though set forth fully.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct / Violate Nursing Practice Act)**

10 15. Respondent is subject to disciplinary action under section 2761, subdivisions (a) and/  
11 or (d), in that Respondent committed acts of unprofessional conduct and / or acts violating the  
12 Nursing Practice Act. Complainant refers to and by this reference incorporates the allegations set  
13 forth above in paragraphs 12- 14, inclusive, as though set forth fully.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board issue a decision:

17 1. Revoking or suspending Registered Nurse License No. 256534, issued to  
18 Franceschini Josephine Gower, aka Josephine Marie Franceschini Gower;

19 2. Ordering Franceschini Josephine Gower, aka Josephine Marie Franceschini Gower to  
20 pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to  
21 section 125.3; and

22 3. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: April 26, 2013

25 Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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28 (rev. 3/5/13)